

Matter of: EMSA Limited Partnership

File: B-254900.4

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DIGEST

Agency properly rejected as technically unacceptable the protester's proposal to provide emergency medicine and ambulatory care services where despite several rounds of discussions, the protester failed to demonstrate in its proposal that it would provide staffing levels that would accomplish all required tasks.

DECISION

EMSA Limited Partnership protests the rejection of its proposal as technically unacceptable and the award of a contract to Coastal Government Services, Inc. under request for proposals (RFP) No. N00140-93-R-CB11, issued by the Department of the Navy to establish and operate an emergency medicine and ambulatory care (EMAC) department at the Naval Hospital in Jacksonville, Florida.

We deny the protest.

The RFP, as amended, called for fixed-price offers for a contractor to provide primary, acute, and urgent care

¹The EMAC department includes the emergency room (ER) and the ambulatory care clinic (ACC). The EMAC services were previously provided at the Naval Hospital under two separate contracts for ER and ACC services. EMSA was the incumbent contractor for the ACC services.

medical services to eligible Department of Defense beneficiaries for a 4-month base period with three 1-year and one 8-month options. For the base period and each option period, offerors were to submit unit and extended prices for various estimated quantities of patient visits, as well as a total price for the base and option periods.

The RFP provided for award of a firm, fixed-price incentive contract to the responsible offeror whose proposal was most advantageous to the government, price and other factors considered. Technical merit was stated to be more important than price, and five equally weighted technical evaluation factors were listed: (1) medical quality assessment and improvement/risk management plan, (2) implementation plan, (3) staffing plan for the ER, (4) staffing plan for the ACC, and (5) experience in providing EMAC services. In order to be technically acceptable overall, a proposal had to be found technically acceptable under each of the five factors.

A detailed statement of work and proposal preparation instructions (which tracked the evaluation factors) were included in the RFP. The RFP also provided that offerors should consider the historical work load data and all other relevant information included in the solicitation to develop a comprehensive staffing plan for the ER and ACC, and that offerors' proposals were to

"include sufficient supporting information to fully explain how the proposed staffing levels will accomplish all required tasks, including ratios of healthcare practitioners to patients and registered nurses to patients used in development of the plan."

The agency received 11 proposals, including EMSA's, by the amended closing date for receipt of proposals. Proposals were evaluated using an adjectival rating scheme; EMSA's proposal was evaluated as being technically unacceptable but susceptible of being made acceptable, and was included in the competitive range. The Navy submitted written discussion questions to EMSA specifically raising, among other things, its proposal's failure to fully address the ACC staffing requirement. Each discussion item contained a direct reference to the applicable RFP provision and the applicable proposal section; EMSA was invited to submit a revised proposal which addressed each discussion item.

The discussion item addressing the ACC staffing plan stated that the protester failed to provide an explanation of how the proposed staffing levels for the basic and option periods would accomplish the required tasks, failed to explain the ratios of healthcare practitioners and registered nurses to patients, and failed to explain how

EMSA determined the allocation of the total number of patient visits between the ER and the ACC. The discussion item also pointed out inconsistencies in the protester's proposed physician and registered nurse staffing levels, given the historical work load data in the RFP.

After reviewing EMSA's technical responses to the contracting officer's discussion letter, the evaluators concluded that EMSA's proposal still remained technically unacceptable under the ACC staffing plan evaluation factor because EMSA had submitted an ACC staffing matrix with completely different ACC hours of operation from those set forth in the RFP. As a result, the evaluators could not evaluate the overall quantity and quality of EMSA's proposed ACC staffing. A BAFO was requested from EMSA, and as a part of this request, EMSA was informed that it still had not submitted an acceptable response to the deficiencies concerning its ACC staffing as noted in the previous discussion letter, that the requirement that EMSA propose a comprehensive ACC staffing plan had not been satisfied, and that the revised ACC staffing matrix did not reflect the actual hours of operation required by the solicitation.

As part of its BAFO response, EMSA revised its proposed ACC staffing plan, but provided no additional narrative explaining how it proposed to fulfill the ACC tasks with its proposed staffing. After evaluating BAFOs, the Navy determined that EMSA's BAFO was still technically unacceptable and had no reasonable chance for award because its BAFO response with regard to the ACC staffing plan remained unacceptable. The evaluators found that EMSA did not provide an explanation in its BAFO as to how its proposed staffing levels for the basic and option quantities would accomplish the required RFP tasks. In addition, the staffing in EMSA's BAFO staffing matrix showed an increase in patient volume for the second option quantity, but a decrease in staff for that option quantity. The first and second option quantities were also internally inconsistent--the staffing summary did not match the staffing matrix. Further, the staffing was not consistent with the direct labor costs in EMSA's price proposal. The evaluators were concerned that the proposed levels of physician staffing and physician assistant staffing were insufficient to provide the medical coverage required for the ACC. The agency noted that it had attempted in discussions to obtain from EMSA an explanation of its proposed staffing levels, but that the protester's proposal continued to lack sufficient supporting information for the ACC staffing plan. Based on the above problems with EMSA's ACC staffing proposal, the source selection authority rated EMSA unacceptable. Award was made to Coastal as the offeror whose proposal was the most advantageous to the government. This protest followed.

level of projected patient visits shown on the staffing summary, EMSA asserts that it should have been obvious even to a "casual observer" that the total annual hours listed on the ACC worksheets--which decreases the hours for physicians and NP/PAs while increasing the patient load--for the two staff categories were in error.

In response, the Navy asserts that to correct these deficiencies in EMSA's BAFO would have required discussions, not clarifications, and that in any event it was not obligated to reopen discussions after receipt of BAFOs to correct any alleged mistakes which first became apparent in the BAFO. The Navy further notes that even assuming the inconsistent ACC staffing in EMSA's proposal could be clarified, it would still be considered unacceptable because of EMSA's failure to explain how EMSA's staffing levels would satisfy the ACC requirements.

We agree with the Navy. As discussed previously, EMSA's proposal reasonably was found unacceptable because of its failure to demonstrate that its staffing would satisfy the ACC tasks--a problem that was only exacerbated by the staffing inconsistencies in its BAFO--notwithstanding the fact that this matter had been the subject of repeated discussions. Thus, whether the staffing inconsistencies could be interpreted, or clarified short of discussions, in the manner now professed by EMSA, is irrelevant.

The protester further alleges that the agency used an undisclosed factor in evaluating its BAFO. According to the protester, the Navy did not disclose that the historical rate of daily patient visits between 11 a.m. and 3 p.m. was 35 percent; yet, the evaluators rated its BAFO technically unacceptable because EMSA's proposed staffing plan estimates that 41 percent of the daily patient visits would occur during that same time period. We find this argument to be without merit. Contrary to the protester's assertions, the evaluation documents do not indicate that EMSA's BAFO was downgraded because its estimate of daily patient visits during that time frame was 41 percent rather than 35 percent. Instead, the evaluation documents indicate that EMSA's proposal was downgraded for failing to explain how the firm's proposed staff would handle its estimate of the daily patient rate during this time frame and not, as the protester would have us believe, because the evaluators had questions concerning the accuracy of its estimate of the daily patient visits during that time period.

Finally, EMSA's allegation that its proposal was more advantageous than Coastal's based on its lower price is also without merit. A proposal that is technically unacceptable cannot be considered for award, even where it is the lowest-priced proposal received and thus would offer cost

EMSA takes issue with the agency conclusion that it failed to provide sufficient supporting information to demonstrate how its proposed staffing levels for the ACC would accomplish the RFP requirements. As noted previously, in its BAFO submission, EMSA had simply completed the required staffing matrix and staffing summary along with a "graphic" depiction of its planning approach--the ACC worksheets. Given the agency's repeated and specific requests for supporting information, we do not think that merely providing worksheets was sufficient to fully explain how all required tasks would be performed with the staffing levels proposed by EMSA, especially where, as here, there were inconsistencies between the worksheets--which EMSA now says were in error--and the staffing summary for certain staff categories. Under the circumstances, we think the agency reasonably concluded that EMSA's BAFO was unacceptable because EMSA did not establish that it was adequately staffed to perform the work.

Contrary to the protester's assertions, the agency was not obligated to reopen negotiations in order to allow EMSA to correct any alleged errors in its ACC staffing plan. As discussed above, the Navy had already held discussions with EMSA, based on EMSA's failure to fully explain how the proposed staffing levels would accomplish the ACC tasks in the firm's initial and revised proposals; the Navy was not again required to help the protester, through additional negotiations, to improve its technical rating until its proposal became acceptable under this evaluation factor. See, e.g., Aydin Vector Div. of Aydin Corp., B-229569, Mar. 11, 1988, 88-1 CPD ¶ 253.

The protester alleges that its BAFO was improperly evaluated as technically unacceptable because of an obvious clerical error in supporting data (which the protester's BAFO refers to as "ACC worksheets") furnished with its BAFO.² The protester acknowledges that the total annual hours for physicians and the total annual hours for nurse practitioners/physician assistants (NP/PAs) listed on the supporting matrix on the ACC worksheets for the first option quantity were not the same as the corresponding hours for these same two staff categories listed on the staffing summary, a document required by the solicitation. However, based on the orderly progression of additional staff at each

²These ACC worksheets were not specifically required by the solicitation; rather, EMSA's BAFO submission describes these worksheets as "graphic depiction" of the "planning approach" it used to develop the proposed staffing matrices for each contract period.

savings to the government. Color Ad Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154. Since the agency properly found EMSA's BAFO technically unacceptable, the fact that EMSA proposed a lower price than the awardee is irrelevant.

The protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel